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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,001	06/24/2003	C. Paul Cox	P-137 / TEP0237-01	1629
832	7590	07/26/2007		
BAKER & DANIELS LLP 111 E. WAYNE STREET SUITE 800 FORT WAYNE, IN 46802				
			EXAMINER	
			FREAY, CHARLES GRANT	
			ART UNIT	PAPER NUMBER
			3746	
			MAIL DATE	DELIVERY MODE
			07/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## Office Action Summary

Application No.

10/603,001

Applicant(s)

COX ET AL.

Examiner

Charles G. Freay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2007.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-16 is/are allowed.
- 6) ☒ Claim(s) 1,7,17-19 and 21 is/are rejected.
- 7) ☒ Claim(s) 2-6, 8-12 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is in response to the amendment of May 25, 2007. In making the below rejections and/or objections the examiner has considered and addressed each of the applicant's arguments.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 7 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Ohashi et al (USPN 6,487,856).

Ohashi et al disclose a stand-alone hydrostatic pump comprising a pump housing (120, in Fig. 3) and endcaps (130a, 130b). The endcaps are shown in Figs. 7 and 8 and include a pair of system passages (131), each system passage being connected to the hydrostatic pump (note the kidney openings at the center of the figures), and each system passage is fluidly connected to a pair of system ports (the openings at the opposite ends of the passages) in an exterior of the endcap housing. Further there are plugs (161) which close the ends of the passages. As clearly shown at least the lower illustrated port of the passages is configured to convey operating fluid between the pump and a motor. The examiner notes that the limitation "configured to convey..." sets

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forth an intended use. The other ends of the passages also have port openings. These openings are configured to convey the operating fluid between the pump and a motor since they are capable of receiving a fluid line to a motor if the valve were removed.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohashi et al as set forth in the Rejections of March 3 and July 27, 2006. In the March 3, 2006 rejection the examiner gave official notice that the use of case drains as claimed was well known. The applicant's failure to traverse this position is taken as an admission that the case drains are well known in the art.

***Allowable Subject Matter***

Claims 13-16 are allowed.

Claims 2-6, 8-12 and 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed May 25, 2007 have been fully considered but they are not persuasive. The applicant argues against Ohashi et al stating that Ohashi et al's system passages terminate in a single system port. The applicant argues that in Ohashi et al the ports have check valves mounted therein and Ohashi et al does not suggest removing them.

The examiner disagrees with these arguments. First, it is noted that the only limitation placed on the system ports is that they are capable of conveying fluid to a separate motor. All of the ports shown at the ends of the system passages are capable of conveying fluid to a separate motor and thus the ports at each end of the system passages are system ports. The only thing a port has to do to be capable of conveying fluid is be capable of receiving a fluid line to transport the fluid. All of the ports in Ohashi et al are capable of receiving lines and are thus configured to convey fluid to a separate motor. Second, it is important to note that a separate motor has not been claimed. Merely the capability to deliver fluid from a port to a motor. Thirdly, with regards to the applicant's arguments that if the check valves or plugs were removed then the systems would be depressurized and the system would be inoperable. The examiner notes that the same can be said of the applicant's device. For the pump of the current application to be operable, a plug or some other member must close the ports which are not conveying system fluid (note paragraph [0052]).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

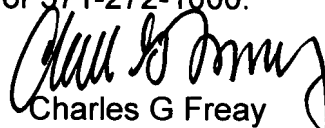
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
July 21, 2007